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Attorneys for Defendants
7 Countrywide Home Loans, Inc. (d/b/a America's
Wholesale Lender), BAC Home Loans
8 Servicing, LP (f/k/a Countrywide
Home Loans Servicing L.P.), ReconTrust
9 Company, N.A., Bank of America, N.A., and
Bank of New York Mellon (erroneously
10 named as Bank of New York)

11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 PETRA MARTINEZ,

15 Plaintiff,

16 v.

17 AMERICA'S WHOLESALE LENDER, *et al.*,

18 Defendants.
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Case No.: 09-cv-05630-WHA

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF MOTION TO
DISMISS COMPLAINT**

Date: January 14, 2010
Time: 8:00 a.m.
Courtroom: 9, 19th Floor
Judge: Hon. William H. Alsup

Defendants Countrywide Home Loans, Inc. (d/b/a America's Wholesale Lender), BAC Home Loans Servicing, LP (f/k/a Countrywide Home Loans Servicing L.P.), ReconTrust Company, N.A., Bank of America, N.A., and Bank of New York Mellon (erroneously named as Bank of New York) ("Defendants") hereby request that the Court take judicial notice of the following facts pursuant to Rules 201(b), (c) and (d) of the Federal Rules of Evidence:

Exhibit 1: A true and correct copy of plaintiff's Deed of Trust, including the Adjustable Rate Rider, recorded with the Monterey County Recorder on January 20, 2006 ("Deed of Trust").

It is appropriate for the Court to take judicial notice of this document because its accuracy is not subject to reasonable dispute and is a matter of public record. *Catholic League for Religious and Civil Rights v. City and County of San Francisco*, 464 F. Supp. 2d 938, 941 (N.D. Cal. 2006).

It is also appropriate for the Court to take judicial notice of the Deed of Trust because plaintiff has incorporated it by reference into her Complaint ("Compl."). On a motion to dismiss, a court can look at the pleadings as well as any document that is "incorporated by reference." *Knivel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005); *Cooper v. Pickett*, 137 F.3d 616, 622-23 (9th Cir. 1997). Plaintiff has incorporated the Deed of Trust by reference in her Complaint. (See, e.g., Compl. ¶¶ 4, 11, 14, 18, 23; *id.*, Ex. C.)

Exhibit 2: A true and correct copy of a Notice of Default and Election to Sell Under Deed of Trust, recorded with the Monterey County Recorder on January 28, 2009 ("Notice of Default").

It is appropriate for the Court to take judicial notice of this document because its accuracy is not subject to reasonable dispute and is a matter of public record. *Catholic League*, 464 F. Supp. 2d at 941.

It is also appropriate for the Court to take judicial notice of the Notice of Default because plaintiff has incorporated it by reference into her Complaint. See *Knivel*, 393 F.3d at 1076; *Cooper*, 137 F.3d at 622-23; Compl. ¶¶ 16, 17, 19, 22, 23; *id.* Ex. E.

Exhibit 3: A true and correct copy of a Substitution of Trustee, recorded with the Monterey County Recorder on May 4, 2009 (“Substitution”).

It is appropriate for the Court to take judicial notice of this document because its accuracy is not subject to reasonable dispute and is a matter of public record. *Catholic League*, 464 F. Supp. 2d at 941.

It is also appropriate for the Court to take judicial notice of the Substitution because plaintiff has incorporated it by reference into her Complaint. *See Knievel*, 393 F.3d at 1076; *Cooper*, 137 F.3d at 622-23; Compl. ¶¶ 27, 33.

Exhibit 4: A true and correct copy of a Notice of Trustee’s Sale, recorded with the Monterey County Recorder on May 4, 2009 (“Notice of Trustee’s Sale”).

It is appropriate for the Court to take judicial notice of this document because its accuracy is not subject to reasonable dispute and is a matter of public record. *Catholic League*, 464 F. Supp. 2d at 941.

It is also appropriate for the Court to take judicial notice of the Notice of Trustee’s Sale because plaintiff has incorporated it by reference into her Complaint. *See Knievel*, 393 F.3d at 1076; *Cooper*, 137 F.3d at 622-23; Compl. ¶¶ 19, 20, 27, 30, 37.

DATED: December 7, 2009

Respectfully submitted,

SEVERSON & WERSON
A Professional Corporation

By: /s/ Kalama M. Lui-Kwan
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